THE HON'BLE SRI JUSTICE C.V. RAMULU

Eleventh day of July,2006

W.P.Nos.26969, 27690 and 27695 of 2005 and 69 of 2006

W.P.No.26969/05

Between:

The Mohan Agro Products
Mutually Aided Cooperative
Society Limited … Petitioner

and

The Government of India,
Ministry of Agriculture,
Department of Agriculture &
Cooperation, Krishi Bhavan,
New Delhi and others …Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.26969, 27690 and 27695 of 2005 and 69 of 2006

COMMON ORDER:

In these four Writ Petitions, common questions of fact and law arise for consideration; therefore, they are being disposed of by this common Order.

Writ Petition No.27695 of 2005 has been filed challenging the authority of the 2nd respondent in issuing the Proceedings - Rc.No.B/199/2005, dated 14-12-2005 cancelling the licence of the petitioner at the behest of the 1st respondent as *mala fide,* illegal and contrary to the Fertilizer (Control) Order,1985 (for short 'Control Order') and consequently to direct the respondents to renew the certificate of registration of the petitioner as per usual terms. The other Writ Petitions have been filed challenging the circular directions issued by the 2nd respondent in directing her subordinates and manufacturers not to supply the fertilizers contrary to the licences granted to the petitioners under the provisions of the Control Order.

For the purpose of disposal of the Writ Petitions, the facts, as narrated in Writ Petition No.27695 of 2005 are necessary to be stated. It is stated in the writ affidavit that the petitioner-society is a wholesale dealer in fertilizers and registered as such under the provisions of the Fertilizer (Control) Order,1985. The certificate of registration was issued by the 2nd respondent under G.S.R.No.758(e) in exercise of the powers under Section 3 of the Essential Commodities Act,1955.

Government has to appoint the Controller as per clause 2(e) of the Control Order and no person shall sell, offer for sale and carry on the business of selling of fertilizers at any place as wholesale dealer or retail dealer, except under and in accordance with clause (8) of the Control Order. Every such person shall obtain certificate of registration from the 2nd respondent by making an application in Form A together with the fee prescribed under clause (36) and a Certificate of Source in Form-O, as per clause 8 substituted by S.O.No.49(E) dated 16-1-2003. Petitioner obtained the Certificate of Source in Form-O from the manufacturers of fertilizers, namely, M/s. Indian Farmers Fertilizers Cooperative Limited (IFFCO), Hyderabad, M/s. Krishak Bharathi Cooperative Limited, Hyderabad, M/s.Mohan Traders, Vijayawada, M/s. Godavari Fertilizers and Chemicals Limited, Vijayawada, M/s. Andhra Pradesh State Cooperative Marketing Federation Limited, Vijayawada and M/s. Coromandel Fertilizers Limited, Secunderabad, which are valid and subsisting. On the basis of such certificates so issued by these manufacturers or as the case may be, the wholesale dealer, the 2nd respondent, who is the competent authority to grant wholesale licence in Form C, issued Registration No.111/2003 to the petitioner, which is valid upto 26-12-2005. The licence in Form C also contains the references to Form O certificates issued to the petitioner. Petitioner has been carrying on the wholesale business in fertilizers as per the registration and other licences granted to it. As the matter stood thus, M/s. KRIBHCO Limited, relying on the letter of the 1st respondent dated 5-7-2005 and Memo dated 20-6-2005 of the Agricultural Officer (Inputs), Vijayawada, issued letter dated 28-7-2005 stating that no sale should be effected from the date of issue of the orders from KRIBHCO to the petitioner. Respondent No.1 in his letter dated 5-7-2005 addressed to the manufacturers, who granted

Certificate of Source to the petitioner, stated that they should deliver the regulated and de-regulated fertilizers either to the PACS or to MACS depending on the necessity and demand in the particular area, which should sell the same fertilizers to the farmers directly. M/s. KRIBHCO Limited sent a letter dated 28-7-2005 informing that they are unable to supply Kribhco Urea to the petitioner-society for wholesale business. Subsequently, the 1st respondent issued Memo dated 20-8-2005 directing that the manufacturers should not sell urea to the wholesale dealers and they should encourage only the retail traders i.e. those who possess the retail certificate of registration. Petitioner submitted a representation to the Government of Andhra Pradesh on 29-10-2005 seeking permission to allow them to distribute KRIBHCO and IFFCO products, apart from other manufacturers' products, but the same has not been disposed of till date. Hence, the Writ Petition.

A detailed counter affidavit has been filed by the 2nd respondent-Assistant Director of Agriculture, Vijayawada, denying the allegations made by the petitioner and stating *inter alia* that the cooperative societies, who are having wholesale fertilizer licence, have to purchase the fertilizers from the manufacturers like KRIBHCO (Krishak Bharati Cooperative Limited) and IFFCO. The wholesale cooperative societies have to sell the products in their districts only to retail cooperative societies; in turn, the PACS have to sell the fertilizers directly to farmers. This is the main motto of cooperative system in selling fertilizers in 3-tier system. Whereas, the petitioner is maintaining 4-tier system by purchasing the fertilizers from the manufacturers, within and outside Krishna district and selling them to private wholesalers, retail dealers and retail cooperatives within and outside Krishna district. Then the Assistant Director of Agriculture

(regular) Vijayawada (FAC) and Agricultural Officer/Fertilizer Inspector visited the petitioner's firm on 18-6-2005 and obtained the purchase and sale particulars of Kribhco urea. As per the particulars obtained, the petitioner has purchased the stock of 18138.5 MTs of urea (from Kribhco 18024 MTs and Markfed 114 MTs) between 1-4-2004 and 31-3-2005. They sold the above urea to Mohan Traders (wholesalers of non-cooperative), Vijayawada to a tune of 17,296.5 MTs, 41 numbers of retail private dealers to a tune of 390 MTs in Krishna District, 20 MTs in Guntur District for two dealers and the balance of 432 MTs of urea to retail cooperative societies in West Godavari District during the above period. The petitioner did not sell any stock to retail cooperative societies in Krishna district. Therefore, the petitioner has violated clause 31(1)(b) of the Control Order. As per the standing instructions, the petitioner has to distribute the stocks within Krishna District only, but they have sold 20 MTs in Guntur district and 432 Tons of Urea in West Godavari District. Therefore, a show cause notice dated 13-9-2005 was issued seeking explanation from the petitioner. The petitioner has furnished explanation on 19-9-2005. However, the same was not convincing and as such, as per clause 31(1)(b) of the Control Order, the wholesale CR No.111/2003 of the petitioner was cancelled on 14-12-2005. The petitioner has not approached the State Appellate Authority before whom the appeal lies as per Clause 32 A(iii) for suspending or cancelling the authorization letter or debarring the dealer from carrying on the business of selling fertilizers. The petitioner has directly filed the Writ Petition and the same is not maintainable.

Learned counsel for the petitioners strenuously contended that the Commissioner and Director of Agriculture has no jurisdiction to issue the impugned Circular and the licence granted to the petitioner

cannot be cancelled on the ground that the petitioner supplied fertilizers to Mohan Traders and since the impugned Orders are without jurisdiction, the question of filing an appeal does not arise. The impugned Circular Order was issued for the alleged purpose of regulating price, which is vested only in the Central Government under clause (3) of the Control Order. The Controller alone is empowered to grant registration under clauses (8) and (9). Further, there is no dispute with regard to the fact that the Controller has granted the certificate of registration to the petitioner to trade with Mohan Traders and Mohan Traders is also granted a certificate of registration to trade with the petitioner. The Commissioner is not the Controller to exercise the powers under clause (8) and it is the Assistant Director, who exercises the powers. Therefore, it cannot be said that the Controller has power to prohibit sale between the licenced dealers within the meaning of clause (7) of the Control Order. The licence cannot be cancelled on the ground that the petitioner supplied fertilizers to Mohan Traders. The licence granted to the petitioner reveals the name of Mohan Traders and the licence granted in favour of Mohan Traders also contains the name of the petitioner. Therefore, it cannot be said that in supplying fertilizers to Mohan Traders, the petitioner has committed any irregularity. The Order passed by the authority also does not reveal any reasons for passing such orders. Therefore, the impugned Orders are liable to be set aside.

Whereas, learned Government Pleader reiterated the same stand that was taken in the counter affidavit of the 2nd respondent and submitted that the petitioner has no case whatsoever and the Writ Petitions are liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused

the entire material made available on record.

It may be noticed that the petitioner has been granted licence and even Mohan Traders was also granted licence and the name of the petitioner herein and the name of Mohan Traders does find place in the licence held by either of them. The only objection of the respondents is that there is 3-tier system adopted for the purpose of distribution and sale of fertilizers in each district, whereas, in these cases, the petitioner sold the fertilizers outside the district and to the wholesalers. Therefore, the impugned Circular Orders were passed directing the manufacturers not to sell fertilizers to the wholesalers, creating a 4th tier in the system. Learned counsel for the respondents submitted that as per Clause 31(1)(b) of the Control Order, the authority ordered for cancellation of licence of M/s.Mohan Traders, Vijayawada. At this stage, it may be necessary to notice the provisions of Clause 31 of the Control Order, which reads as under:

> "**31. Suspension/cancellation of registration certificate:-** (1) A Registering Authority or, as the case may be, the Controller may, after giving the holder of a certificate of registration or a certificate of manufacture or any other certificate granted under this Order, an opportunity of being heard, suspend or cancel such certificate on any of the following grounds, namely,-
>
> (a) that such certificate has been obtained by misrepresentation as to material particulars;
>
> (b) that any of the provisions of this Order of any of the terms and conditions of such certificate has been contravened or not fulfilled.
>
> Provided that while cancelling the certificate the holder thereof may be allowed a period of 30 days to dispose of balance stock of fertilizers if any, held by him;
>
> Provided further that the stock of fertilizer lying with the holder after the expiry of the said 30 days shall be confiscated.
>
> (2) and (3)…….
>
> (4) Wherever the person alleged to have committed the contravention is an industrial dealer, the Registering Authority may also take action against the holder of such certificate of registration, under sub-clauses (1) and (2);

Provided that……

Provided further that the Controller shall, in case of the order for suspension passed by the Registering Authority, on receipt of the detailed report and after giving the person an opportunity of being heard, pass final order either revoking the order of suspension or cancelling the certificate of registration, within fifteen days from the date of receipt of the detailed report from the registering authority, failing which the order of interim suspension passed by the Registering Authority shall be deemed to have been revoked without prejudice, however, to further action which the Controller may take against the holder of certificate under sub-clause (1).

Provided also that……..

Clause (31) of the Control Order indicates that there are two stages of hearing, i.e., pre-decisional and post-decisional. Except receiving the explanation, the petitioner was not given any opportunity of hearing at any stage. These facts have not been denied in the counter affidavit.

As noticed above, once the petitioner has been granted licence and Mohan Traders was also granted licence and the names of the petitioner and that of Mohan Traders find place in the licences held either of them, unless and until a valid provision of law has been invoked for the purpose prohibiting the trade in between them, the impugned Orders cannot be said to be legal. Except saying for the first time in the counter that the fertilizers are to be distributed in 3-tier system, whereas petitioners and Mohan Traders have introduced 4th tier in the system and the petitioners are entitled to do business within the District, whereas they have traded outside the district, these things have not been enquired into in detail. May be, a show cause notice was issued and on the basis of it, cancellation was ordered. But Clause (31) of the Control Order contemplates a detailed enquiry into

the matter and also personal hearing to be afforded to the petitioners. Such a course of action was not adopted. Apart from that, what is stated in the counter does not find place in the impugned final proceedings of cancelling the licence. What were the allegations and what were the reasons and what is the explanation submitted by the petitioner and why the cancellation is required in the matter are absent in the impugned orders. Therefore, without going further into the merits of the case, I am of the opinion that the impugned Orders have been passed in gross violation of principles of natural justice and on this ground alone, the impugned Orders as well as the Circulars issued by the respondents are liable to be set aside and are accordingly set aside.

The Writ Petitions are, therefore, allowed. However, this will not preclude the respondents from taking appropriate action as per law, if they are so advised after hearing the petitioners and furnishing reasons for taking such action against them. No costs.

11-7-2006

prk